

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-008677-002 DT

07/29/2016

HON. TERESA SANDERS

CLERK OF THE COURT
S. Radwanski
Deputy

STATE OF ARIZONA

ELLEN DAHL

v.

EARNEST LEE MCALLUM (002)

STEPHEN L DUNCAN
MARCI A KRATTER

CAPITAL CASE MANAGER

RULING

The Court has read and considered defendant's *Proposed Jury Instructions Regarding Residual Doubt* filed November 10, 2015.

Defendant asks the Court to permit, in the penalty phase, argument, the introduction of evidence, and instruction on residual or lingering doubt.

The Arizona Supreme Court has consistently held that residual doubt does not play any role in the penalty phase of a capital trial. *See, State v. Nordstrom*, 230 Ariz. 110, 115 ¶15, 280 P.3d 1244 (2012)(“A defendant has no constitutional right to present residual doubt evidence at sentencing.”); *State v. Speer*, 221 Ariz. 449, 462, ¶68, 212 P.3d 787, 800 (2009)(“The superior court rejected Speer's proposed instruction on residual doubt as a mitigating circumstance and also denied his request to argue residual doubt as a mitigating circumstance. The court acted correctly.”); *State v. Dann*, 220 Ariz. 351, ¶136, 207 P.3d 604 (2009)(“Once a person is found guilty beyond a reasonable doubt, claims of residual doubt do not constitute mitigation for sentencing purposes.”); *State v. Harrod*, 218 Ariz. 268, ¶¶42-43, 183 P.3d 519 (2008)(no constitutional or statutory right to present residual doubt evidence, including polygraph results and assertions of innocence during allocution); *State v. Andriano*, 215 Ariz. 497, ¶¶44-45, 161 P.3d 540 (2007)(“Both the United States Supreme Court and this Court have rejected the argument that a capital defendant must be allowed to present residual doubt evidence in mitigation.”). *See also, Oregon v. Guzek*, 546 U.S. 517 (2006).

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IT IS ORDERED denying defendant's Proposed Jury Instructions Regarding Residual Doubt.